IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

(1) D.B. CIVIL WRIT PETITION NO. 669/2006
(Ram Ratan & Ors. Vs. Union of India & Ors.)

(2) D.B. CIVIL WRIT PETITION NO.1264/2006
(Vinay Kumar & Ors. Vs. Union of India & Ors.)

(3) D.B. CIVIL WRIT PETITION NO.594/2006
(R.K. Ojha & Ors. Vs. Union of India & Ors.)

(4) D.B. CIVIL WRIT PETITION NO.2515/2006
(Union of India Vs. Kishore Singh & Ors.)

(5) D.B. CIVIL WRIT PETITION NO.2516/2006
(Union of India Vs. Hukam Chand & Anr.)

Date of order : 22nd Nov., 2006

P R E S E N T

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. M.R. Singhvi }
Mr. Girish Joshi }
Mr. P.R. Singh }, for the petitioners.
Mr. Mahesh Bora }
Mr. J.K. Mishra }
Mr. A.K. Khatri }, for the respondents
Mr. Kamal Dave, for the Union of India.

BY THE COURT: (PER HON'BLE RAJESH BALIA, J.)

All these petitions arise from the common order passed by the Central Administrative Tribunal

dated 27.1.2006 in three Original Applications No. 253, 259 and 260/2005. Since the basic issue raised in all these Original Applications was common relating to exercise of power by the Railway Administration in canceling the qualifying/selection tests for appointment to the posts of Station Superintendent in the pay scale of Rs. 7450-11500, Station Masters in the pay scale of Rs. 6500-10500 and to the posts of Passenger Guards in the pay scale of Rs.5000-8000 held on different dates between 12.3.2005 to 01.5.2005 for different posts, details of which we shall notice shortly, though such details are not of significant relevance for the controversy raised in these petitions. After the examinations were held and all concerned had participated in the examination, the result for the post of Station Superintendents, and for the post of Station Master were declared on 18.5.2005 and for the posts of Passenger Guards was declared on 21.6.2005.

After the results were declared in the first instance, some individual representations were made raising objections to the format of question papers set for the examination so held for the posts of Station Superintendents and Station Masters on 30.5.2005. The first of such representation by four individuals dated 30.5.2005 was submitted for cancelling the examination of Station Superintendents grade Rs. 7450-11500 stating that the question paper

for examination was not made bilingual as required by the letter of the Railway Board dated 8.7.1992. The question No.3 was not clear because the examinees were required to translate and it was not clear in which language; that no question was set in regard to the official language whereas in every written test, at least one question relating to the official language was required to be set and significantly about consequent inquiry it was alleged that in the selection the juniors candidates have been declared passed in preference to the senior candidates.

Similarly, another representation was submitted by ten individual candidates, pointing out similar defects in the written test for the examination held for Station Master grade Rs. 6500-10500 and sought cancellation of the examination held on 18.5.2002. The employees stated that there was no question set for official language; that the question paper was not bilingual; that it was only in Hindi and that junior persons have been declared passed and seniors have been declared failed. Other allegations were made that there were many defects in the current selection process. But none was pointed out. It was emphasized that the applicants are senior employees and they are loyal to the railway, therefore, the representation should be accepted.

Until then no complaint or grievance was

raised by the Union nor any grievance was raised about question paper pertaining to selection of Passenger Guards. It was only after result of examination held for Passenger Guards was declared, on 25.6.2005, a representation was submitted by Babu Singh, Secretary of the Western Railway Employees Union to the Divisional Railway Manager, North Western Railway, Jodhpur stating that about 15 senior Goods Guards have represented that in the examinations held on 15.5.2002 and 21.5.2002 for selecting Passenger Train Guards, the question paper did not have questions on any official language; some of the candidates were using mobile phones and some of them were using books for answering the questions; that the syllabus was not declared in advance and that the Senior Goods Train Guards were failed. Passing reference was made to two persons who were promoted without taking tests and that the result of the written test for selecting Senior Passenger Guards was sought to be cancelled.

A letter was also received from Deputy Director, Raj Bhasha, Railway Board dated 23.6.2005 stating that in the written test held for Station Superintendent Grade 7450-11500 and Station Master Grade 6500-10500 the question paper was only in Hindi language and not bilingual and no question was set about official language whereas 10% marks should have been allotted to the questions relating to official language. The comments on the aforesaid aspect of the

written test were sought. No request for cancelling the test for that reason was made.

Thereafter, a similar complaint was also lodged by Western Railway Employees Union through its Secretary vide letter dated 25.6.2006 about the written test held for Station Superintendent and Station Master. It was stated in this letter for the first time that in the question papers, the directions issued by the Railway Board on 7.8.2003 was not adhered to by providing objective type of questions. Apart from the aforesaid ground of lack of fulfillment of objective type question, it was repeated that the question paper was not bilingual but was set only in Hindi and that no question was set, carrying 10% of total marks relating to `Raj Bhasha'. It was stated that some of the candidates had mobile phones with them and books were being used by them. It was also alleged that senior employees who have followed discipline were declared failed. On these allegations, the cancellation of examinations was sought.

A representation was also received from candidates, who have passed the examination, apprehending that the candidates who have failed are trying to get the result cancelled, to counter above representation.

Ultimately by two separate orders dated 23.8.2005, all the three examinations were cancelled. The order cancelling examination for Station Superintendents as Station Masters reads as under :-

"मंडल रेल प्रबन्धक कार्यालय,
उत्तर पश्चिम रेलवे, जोधपुर

पत्रसं.757ई/ईएच/स्टे.अधी-मास्टर/चयन/2005/123
दिनांक23.08.2005
समस्त स्टेशन मास्टर/अधीक्षक,
उत्तर पश्चिम रेलवे, जोधपुर मंडल

विषय: स्टेशन अधीक्षक वेतनमान 7450-11500(आरएसआरपी)व स्टेशन मास्टर वेतनमान 6500-10500(आर.एस.आर.पी.)के पद के लिये चयन।

इस कार्यालय के समसख्यक पत्र दिनांक 04.03.2005 दि0 17/3/05 द्वारा स्टेशन अधीक्षक वेतनमान 7450-11500 व स्टेशन मास्टर वेतनमान 6500-10500के पद की लिखित परीक्षा दिनांक 07.05.05, 12.03.05, 30.04.05 को हुई पूरक परीक्षा के प्रश्न पत्रों में रेलवे बोर्ड के पत्र स. ई(एन.जी)1-2000पी.एम-1/41 दिनांक 07.08.2003 तथा पत्र सं. हिन्दी-87 । ओ.एल.-1 । 10 । 3 दिन 03.11.1988 में निहित वाछित आवश्यकताओं की पूर्ति न करने के कारण उक्त लिखित परीक्षाओं सक्षम अधिकारी के अनुमोदन से निरस्त किया जाता है।

एस.डी.
(अशोक कुमार शर्मा)
स का अ
कृते वरिष्ठ मंडल कार्मिक अधिकारी
उ.प.रे., जोधपुर"

Similar order, also dated 23.8.2005, was passed cancelling the examination held on 14.5.2005 and supplementary examinations held on 21.5.2005 for the post of Passengers Guards Grade 5000-8000, which reads as under :

"मंडल रेल प्रबन्धक कार्यालय,
उत्तर पश्चिम रेलवे, जोधपुर

पत्रसं.456ई/ईसी/सवारी गार्ड/पदो-स्था./2005/ दिनांक23.08.2005

स्टेशन मास्टर/अधीक्षक,
जोधपुर ,मेड़ता रोड व समदडी।

विषय: सवारी गाडी गार्ड वेतनमान 5000-8000 के पद के लिये चयन।

इस कार्यालय के समसख्यक पत्र दिनांक 21.06.05 द्वारा सवारी गाडी गार्ड वेतनमान 5000-8000 (आर.एस.आर.पी.) के पद की लिखित परीक्षा दिनांक 14.05.05 व पूरक लिखित परीक्षा दिनांक 21.05.05 के प्रश न पत्रों में रेलवे बोर्ड के पत्र सं.ई (एन.जी) 1-25000/पी.एम-1/41 दिनांक 07.08.2003 तथा पत्र स. हिन्दी-87। ओ.एल.-1 । 10 । 3 दिन 03.11.1988 में निहित वाछित आवश्यकताओं की पूर्ति न करने के कारण उक्त लिखित परीक्षाओं को सक्षम अधिकारी के अनुमोदन से निरस्त किया जाता है।

एस.डी.
(अशोक कुमार शर्मा)
स का अ
कृते वरिष्ठ मंडल कार्मिक अधिकारी
उ.प.रे., जोधपुर"

To challenge cancellation of the examinations as above, the candidates who were declared successful

in the said examinations preferred above three Original Applications before the Central Administrative Tribunal. The Tribunal vide its common order dated 27.1.2006 passed in all the three Original Applications set aside the orders dated 23.8.2005 in relation to the examinations held for the post of Passenger Guard and Station Master by allowing the OA Nos. 253 and 259 of 2005 but dismissed the OA No. 260/2005 (RK Ojha & Ors. Vs. Union of India & Ors.) by holding that the question paper for Station Superintendents did not contain the 50% of the objective type questions, therefore, the cancellation order was justified.

Aggrieved with the aforesaid order of the Tribunal, these five writ petitions have been filed. Union of India have preferred two writ petitions, challenging the order passed in OA Nos. 253 and 259 of 2005. The writ petitions filed by the Union of India are:-

(i) DB Civil Writ Petition No. 2516/2006 arising out of OA No. 253 relating to the examination held for selecting Passenger Guard Grade 5000-8000 and;

(ii) DB Civil Writ Petition No.2515/2006, relating to OA No.259/2005, relating to the cancellation of examination held for selection of Station Master Grade 6500-10500.

Two writ petitions have been filed by different set of private individuals against the same Original Applications;

(i) Writ Petition No.669/2006 which has been preferred by Ram Ratan & Ors., relates to written test held for the post of Station Master Grade 6500-10500, and;

(ii) Writ Petition No.1264/2006 has been preferred by Vinay Kumar & Ors. Challenging the setting aside of the order dated 23.8.2005 cancelling the written test held for selecting Passenger Train Guards Grade 5000-8000, result of which was declared on 25.6.2005.

The above four writ petitions relate to setting aside the Tribunal's order, allowing the OA No.253 and 259 of 2005, and are preferred by the UOI and candidates who have failed in the examinations, respectively.

Lastly, Writ Petition No.594/2006 has been preferred by R.K. Ojha & Ors., whose Original Application for quashing the order dated 23.8.2005 cancelling the written test held for the posts of Station Superintendents has been dismissed. Thus, it is by the candidates who have passed the examination held for selecting the candidates for the posts of Station Superintendents.

All the questions raised in these writ petitions are about the commonality of the issue relating to alleged violations of the instructions for setting up the question papers and the exercise of power by the Railway Administration in cancelling the examination without reasons.

So far as the question of vesting of power with the Railway Administration to cancel the examination is concerned, this has not been in dispute and, in our opinion, rightly so. Even in the absence of any rule, the authority who has right to hold the examination possesses the right to cancel the examination also as it is inherent in the power to hold the examination.

The defects which have been pointed out on behalf of the respective complainants in respect of all the examinations, two are common. Firstly that the questions papers were required to be set in bilingual format but the questions papers were set only in Hindi and secondly that no question was set in Raj Bhasha. The fact that the question paper was not set in bilingual format and no question was set in respect of Raj Bhasha are not the facts in dispute.

So far as the question paper relating to the post of Station Masters and Station Superintendent was

concerned, one complaint speak about not setting the requisite number of objective type of questions as per the circular of the Railway Board about which rival claims have been made by the respective parties.

The Railway Administration has taken stand before the Court that the Circular issued by the Railway Administration being of binding nature and having statutory force. Circular dated 3/11/1988 required setting up of bilingual question papers and providing one question for Raj Bhasha and by another circular dated 7/8/2003 it was required that certain percentage of marks be allotted to objective type questions. In violation of these circulars there was no option with the Railway Authorities but to cancel the examination. In other words, breaches of directives of the Circular of the Railway Board issued from time to time in that regard must necessarily result in invalidation of the examination according to respondent Railway Administration and no discretion was left with the concerned authorities but to cancel the examination.

On behalf of the successful candidates it was contended that the power to cancel the examination, which vested in the respondents was to be exercised at the discretion of such authority. Every irregularity committed in setting up the question papers would not result in automatic cancellation of the examination.

Like any other discretionary power, the power was required to be exercised on relevant consideration by considering whether the breaches committed in setting up the question papers should necessarily result in cancellation of examination or in other words, the harm and the prejudice caused to the candidates as a class as a result of alleged breaches and whether the question papers were in accordance with object with which examinations are held, must necessarily go into consideration before the steps can be taken for cancelling the examination. Decision making process and decision has been vitiated because of the mechanical manner in which the power has been exercised without application of mind to relevant consideration before exercise of the power vested in the concerned authority. It has rendered decision making process arbitrary, unreasonable and unfair resulting in wholly unjust consequences. It was urged that it is apparent that no prejudice has been caused by the alleged breaches to anyone nor any such prejudice to candidates due to alleged deviation in format of question paper has been alleged by any party. No other allegation except a bald statement in some of the representations that seniors have failed and juniors have passed in examination, no nexus with failure of seniors with defects in the question paper has been spelt out either by the makers of the representations or during the course of the arguments. It was pointed out that so far as absence of question

relating to Raj Bhasha is concerned, it is admitted ground that answering the question of Raj Bhasha was not even compulsory then what to say of awarding any marks. Therefore, non-inclusion of question of Raj Bhasha cannot prejudice any one and cannot effect the validity of the examination. It was also pointed out that the instructions relating to having bilingual paper was for the purpose of advancing the cause of Hindi and to make the option given to the employees to write their answers in Hindi more meaningful. Therefore, the object of having a question papers to advance the cause of examinees opting Hindi medium is not defeated by setting up the question papers only in Hindi language when it is not disputed and denied that all the employees had opted for Hindi medium and were examinees who were to write their answers in Hindi. Therefore, not publishing bilingual question papers also cannot cause any prejudice or loss to any candidates taking that examination. It was urged that the circular dated 3.11.1988 vests only a discretion in the competent authority to cancel the Examination only in respect of non-compliance of certain provisions of it and not in each and every part of it. It provides for giving option to candidates taking written examination for selection and promotion to write answers in Hindi and for that purpose it further requires that paper be made bilingual. It is only for breach of aforesaid requirement that competent authority has been given authority to cancel the

examination. Breach of condition giving option to write answers in Hindi Medium is not even alleged and as the question papers were set in Hindi, the significance of mandate to set up the question papers in bilingual language is not defeated. It was further urged that non-setting of a question on Raj Bhasha has not been made a ground for setting aside the examination though setting up a question on Raj Bhasha is also part of the same instructions. The fact that this non-setting up of the questions on Raj Bhasha has also not been made a ground for which examination could be cancelled, yet this has been used as one of the grounds to cancel the examination goes to show not only non-application of mind to relevant consideration but also taking into account the irrelevant consideration for cancelling the examination, results of which have already been declared.

So far as the dispute about non-setting up the requisite number of objective type of questions, the issue was joined about the requisite percentage of objective type of questions by pointing out the instructions showing that even the questions, answers to which were required to be given in one or two-three words are to be considered objective questions. It was urged that if the questions paper of each examination is taken into consideration, which has been placed on record by the railway administration

during the course of hearing under the direction of the Court, it is revealed that such questions are part of each question papers and fulfills the requisite percentage of objective type of questions. Apart from this issue it was urged that as per the rules relating to the scheme of written test for promotion/selection to a given post what is important is that written test should be such as to test the efficiency of person who takes the examination. It is also relevant that before the questions papers are found to be defective as to call for cancellation of examination whether the question papers set up by the respondents conforms to the said object. So long as this object is not defeated, the setting up of the questions papers in variance with form by itself cannot be a ground cancelling examination. Any instruction as to form of question paper can only be treated as guideline in furtherance of object of setting examination, but cannot have overriding effect to invalidate the examination where the basic object of holding examination is not affected. The rules contained in IREM do not confer specifically any power for cancelling of the examination. All the candidates having taken the examination without any objection, the objections to form of paper have been raised only after the result has been declared by some candidates who have failed. It goes to show that there has been no real grievance against the question papers. The real grievance is against the result by the persons

who have failed. It was, therefore, urged that the examination cannot be cancelled at the instances of those who have taken their chance in the examination without demur and kept silence and the grievance has been raised only after the result was announced to get rid of the result. This only reflects that the question paper was designed to find the suitability of the candidates for the job to the extent the written test was required. On such a belated complaint, no action ought to have been taken by the respondents and it appears only to have been taken under some pressure of the Union to satisfy some employees, who were not successful at the examination.

The common thread in all the complaints whether by the private individuals or by the Unions shows that real pinch is that some seniors have failed which according to the learned counsel appearing for the successful candidates cannot be a relevant consideration for cancelling the examination.

Mr. M.R. Singhvi, appearing for the unsuccessful candidates supporting the Railway Administration, contended that it is admitted that the power to cancel the examination for breach of instructions contained in circular dated 3.11.1988 exists. It must be held that the power was exercise for the purpose for which it was vested with the competent authority and therefore, no further question

of judicial scrutiny arises about the validity of exercising power which lawfully vested in the respondents. Therefore, the cancellation order passed by the competent authority in respect of all the candidates was valid and the Tribunal could not have cancelled the examination held for the posts of Station Master and Passenger guards and that sustaining of the order for the examination held for Station Superintendent has been rightly so sustained. It was also urged that the Tribunal could not have examined the validity of order dated 23.8.2005 as an appellate authority and to reach its own conclusion about the percentage marks allotted to the objective type of questions to find substance in the rival contentions made in that regard.

In Vinay Kumar's case (D.B.Civil Writ Petition No.1264/2006), an application has also been moved for raising an additional ground that no examination in fact were required to be held for Senior Goods Train Guards for being appointed as Passenger Guards because their pay-scales are identical and no question of promotion is involved and it is only a matter of transposition from one post to another post. Therefore, holding of written examination for such posting is not necessary. However, in that regard it is submitted by Mr. Singhvi that the applicants have also joined the same issue before the Tribunal that holding of the written

examination is not required for the aforesaid post.

It may be stated that this question does not arise in this lis arising from the OA filed by the successful candidates before the Tribunal. Moreover, this issue has been raised before the Tribunal by way of independent Original Application. In view of above, the said application is rejected. However, it is without prejudice to the merits of contentions raised by Mr. Singhvi in the original application before the Tribunal pending application so far as this issue raised through the application is concerned.

It will be apposite here to notice the relevant provisions for holding written test as part of the procedure for selecting suitable candidates for appointment either by process of selection or by promotion from amongst the Group `D' employees. The Indian Railway Establishment Manual (hereinafter referred to as “IREM”) provides the relevant rules for recruitment to Group `C' staff, to which all the posts in question belong. Section “B” of Chapter II of IREM Vol.I (Revised Edition 1989), which is stated to be the last published edition and has been made available to us with correction slips, lays down Rules governing the promotion of Group “C” staff. Para 211 defines promotion to include promotion from a lower grade to a higher grade, from one class to another class, from one group to another group, and categorises posts as

non-selection posts and selection posts. Selection posts are stated to be the posts, grades or classes which have been declared as such by the Railway Board and to which promotions are made on the basis of a positive act of selection as per procedure in force for filling up the selection posts.

Para 213 (a) lays down basic requirement of promotion. It says:-

> "A Railway servant may be promoted to fill any post whether a selection post or a non-selection post only if he is considered fit to perform the duties attached to the post. The General Manager or the Head of Department or Divisional Railway Manager may prescribe the passing of specified departmental or other tests as conditions precedent to a Railway servant being considered fit to hold specified post; such rules should be published for the information of the staff concerned."

Para 214 (a) envisages that non-selection posts will be filled by promotion of the senior most suitable Railway servant. Suitability whether of an individual or of a group of Railway Servants being determined by the authority competent to fill the posts on the basis of the record of service and/or departmental tests, if necessary.

Para 215 relevant for our purpose, as the

matter relates to promotion to Group “C” staff, to the posts which are selection posts, as substituted under the authority of Ministry of Railway letter No.E(NG) I-2000/PM1/41 dated 7/8/2003. Sub-para (a) of Para 215, which governs the present selection envisages that selection post shall be filled by a positive act of selection made by Selection Boards, from amongst the staff eligible for selection. The positive act of selection shall consist of written test to assess the professional ability of the candidates, for which reasonable advance notice should be sent, except in the case of selection for promotion to posts in the categories of Teachers, Law Assistants, Physiotherapists and Telephone Operators, where the positive act of selection shall consist of both written test and viva-voce test.

Sub-para (c) of para 215 envisages that promotion to selection post shall be made by competent authority in accordance with recommendations of Selection Board in the manner detailed in para 219.

Sub-para (d) of Para 215 permits Railway Board to adopt procedure other than the one laid down in para 219 while deciding the individual cases of hardship.

The aforesaid provisions brings out two things very clearly that positive act of selection for

promotion to selection post has to be through written test to assess the professional ability of the candidates and the requirement under para 213, which makes it a prime consideration for any procedure for promotion to selection post or non-selection post to be fit to perform duty attached to the post. The method of assessing fitness varies, depending on the fact that post is a non-selection post or selection post. Adjudging the fitness in the case of non-selection post is primarily on the basis of service record and in a given case through departmental test. In the case of selection post, professional ability of the candidates is to be adjudged through written test. The procedure for holding written test is envisaged under para 219, which is ordinarily to be adhered to but Railway Board has been empowered to make departure in a given case. However, the basic condition remains that it should be conducive to adjudge the professional ability of the candidates for promotion through selection.

Sub-para (a) of Para 219 envisages that when a Selection post is to be filled, the authority empowered to constitute a Selection Board shall direct to the Board to assemble and make recommendations. It shall also nominate the officer who shall act as the Chairman of the Board. The responsibility for selection is cast on all the members.

Sub-para (b) of para 219 envisages that an officer of the concerned Department who is also a member of the Selection Board must be authorised to set the question paper for written test and where possible, another officer who is also a member of the Selection Board should be nominated to evaluate the answer books, if such a test is held as a part of the Selection or determining the professional ability.

Sub-para (c) (i) of para 219, which is centre of controversy was substituted with the authority of Ministry of Railway's letter dated 24/11/2000 and 8/3/2002, reads as under:-

> "219 (c) (i) : In the written test, if any, held as part of the selection for promotion to the highest grade selection post in a category, objective type questions should be set for about 50% (in the range of 45% to 55%) of the total marks for the written test. In the written test, if any, held as part of the selection for promotion to other lower grade selection posts, objective type questions should be set to the extent of about 25% (in the range of 20% to 30%) of the total marks for the written test."

By another letter dated 7/8/2003, instructions for negative marking to a wrong answer to the objective question has been deleted. By yet another letter of the Railway Board No.E(NG)1-

2004/PM1/25 Dated 21/9/2004 clause (iii) was inserted in para 219(c) as under:-

> "(iii). The question paper for the written test should have practical basis i.e. It should be designed to test the ability of the candidates to tackle the practical problems they are likely to face rather than their theoretical knowledge."

The distribution of marks amongst the written test for adjudging professional ability, record of service and seniority has been provided under sub para (g). 50 marks have been assigned to adjudge the professional ability, 30 marks have been assigned to service record and 20 marks for seniority. It also provides 60% as minimum pass marks required to be obtained in professional ability as well as the minimum aggregate marks for the purpose of being included in the select list. Once the process of marking for the written test, service record and seniority is complete then who have secured qualifying marks prescribed under sub-para (g) of para 219, then the candidates are to be arranged in the order of seniority for promotion. Those who secure 80% or more marks are classified as "outstanding" and placed in the panel appropriately in order of their seniority allowing them to supersede not more than 50% of total field of available seats. In other words, persons who secure above 80% marks in aggregate are allowed to

supersede their seniors upto 50% of the available posts. However, common thread in the entire process is the emphasis laid down to adjudge the professional ability through written test which has addressed itself to that end and also the possibility of deviation in procedure is not ruled out in certain circumstances. The scheme contained in the IREM is directly related to adjudge the suitability of persons to the requirement of posts for which selection is being made.

The other part of the issues raised in this proceeding relates to instructions issued by the Railway Board in relation to recognition of Hindi as an official language and its users in the selection test. In this connection, contentions and arguments have centred around the Railway Board's circular dated 3/11/1988 (Annex.3) filed along with the writ petition no.669/2006, Ram Ratan and others vs. Union of India and others. It will be profitable to reproduce the relevant provisions, which have bearing on the controversy raised in the writ petition:-

"While consolidating various instructions issued by the Board from time to time regarding option of Hindi medium in departmental examinations, it has been decided that the special care should be taken of the following measures in all the departmental examinations:-

(1) Option of Hindi medium

should be allowed in all the qualifying and competitive departmental tests, which include technical & non-technical departmental examinations also, conducted by the railway offices located in all the regions `A', `B' and `C' irrespective of the fact whether translation of concerned rule books is available or not. It should invariably be made clear to the candidates in the beginning itself i.e. While calling for applications for these examinations that the option of Hindi medium would be allowed in the said examination. However, in departmental examinations conducted for Technical posts, the knowledge of English, wherever necessary, could be ascertained.

(2) In the qualifying and competitive departmental tests conducted for technical and non-technical posts, candidates will have option to write answers to all the question papers, except the General English Paper, in Hindi. Candidates should also be allowed to use such technical words in English whose equivalents are not known to them. Similarly, they are also allowed to give extracts in English from technical books, wherever necessary.

(3) Question papers of all the departmental tests, whether technical or non-technical, should invariably be prepared in bilingual form. Each question paper should contain the clear mention about the option of Hindi Medium.

(4) Option of Hindi medium

should also be allowed to the candidates in oral tests and viva-voce conducted for departmental selections. The information regarding such an option should be given in writing through notices issued in this regard. This option is also applicable to oral tests conducted by the training institutes after the completion of training.

(5) Since on the Railways, cadre and channel of promotions for Hindi and English Stenographers is the same, therefore, where some posts of Steno `C' are to be filled up by departmental promotion from amongst steno grade `D' employees, option of Hindi or English stenography should be given to grade `D' stenos in all steno grade `C' selections, so that Hindi steno grade `D' could also get promotions and for this purpose requisite posts of steno `C', should be earmarked as such Hindi Steno Grade `C' could be posted with Hindi knowing officers or with those who are desirous of doing their work in Hindi.

(6) Questions regarding Official Language Policy and Rules should also be set up in departmental test, which include technical and non-technical examinations also, conducted for group `C' posts, for promotion from group `C' to group `B' posts and in limited departmental competitive tests conducted for filling up the vacancies in group `B'. In order to judge the professional ability of the employees for this purpose, 10% marks out of total

> prescribed marks should be prescribed for Official Language Policy and Rules and these questions should be set up in consultation with the Mukhya Rajbhasha Adhikari.
> (7).....
> (8).....
> (9).....
> (10).....
> (11).....
> (12) In case, option of Hindi medium is not allowed or question papers are not made bilingual in any departmental tests, whether technical or non-technical, such an examination will be treated against the rules and could be cancelled by the competent authority."

It has been common ground that notwithstanding envisaging 10% of the total prescribed marks should be prescribed for Official Language under the Policy and Rules and these questions should be set up in consultation with the Mukhya Rajbhasha Adhikari, attempting of these questions by the candidates has been made optional and not compulsory.

It may also be noticed that as per para 12 of circular dated 3/11/1988, where option of Hindi medium is not allowed or question paper is not set in bilingual in the selection test it can be considered as against the Rules, for which the competent authority could cancel the examination. Neither absence of question about Raj Bhasha has been

mentioned which could be treated as breach of Rules nor such deviation has been included in ground for which cancellation of examination can follow.

In the background of the aforesaid scheme of IREM and circular dated 3.11.1988, to which reference has been made and alleged violation thereof, which has led to the cancellation of examinations of all the three posts can be stated to be as under:-

(i) No question has been set up in relation to official language;
(ii) Question paper has not been made bilingual i.e. to say it has not been made in English and papers have been set in Hindi with the use of some technical English words and English numerical and lastly;
(iii) Question papers set for selection to the post of Station Superintendent and Passenger Guard did not contain requisite percentage of objective type questions, which was treated as violation of circular dated 7/8/2003.

The Tribunal has found that non-setting up questions on official language being of no consequence in view of the fact that answering such questions was optional and that non-setting of question papers in bilingual form and by setting the question papers in Hindi no prejudice has been caused to any candidate as all the candidates had opted to appear in Hindi

medium, therefore, for such reasons the examinations were not liable to be cancelled. In relation to third grievance, it was found that so far as the written tests for selection to the posts of Passenger Guard and Station Masters are concerned, there was no violation of the requirement of setting up the objective type questions within the range of required percentage. Hence, the cancellation orders in respect of the two posts have been set aside.

But it agreed with the competent authority in the case of R.K.Ojha & others that selection tests held for selection of Station Superintendents, objective type questions set in the question paper fell short of the required percentage of total marks. Therefore, the cancellation of the said examination was held to be justified and sustainable.

It may be noticed that while requirement of percentage of questions set of objective type to be set in the written test held for selection post has been included in IREM in para 219, the requirement of setting up of bilingual paper and framing the question on official language to the extent of 10% of total marks is the requirement of Circular dated 3/11/1988 as part of Railway Board's letter giving option to use Hindi in writing answers and to promote Raj Bhasha. A question relating to Raj Bhasha was required to be set in question papers providing an opportunity to the

employees to know something about Raj Bhasha, but kept the answering of questions optional.

The first question, in the aforesaid background, which calls our attention is whether the breach of any of these Rules renders the examination invalid mandatorily, leave no choice with the competent authority but to cancel the examination as contended by learned counsel for the Union of India and supported by failed candidates or it remains a matter of discretion to be exercised by the competent authority on some relevant consideration in the given set of facts and circumstances. In other words, whether the competent authority has option either to cancel the examination for such violation or to act on the examination held with such violations yielding a fruitful result.

There is common ground so far as IREM is concerned. There is no specific provision in IREM envisaging cancellation of examination by competent authority for any alleged breach of Rules. However, absence of Rule cannot be taken as lack of authority to cancel the examination. As a matter of general principle it can be taken as well settled that an authority entrusted with power to hold examinations for a particular object must inherently deemed to possess power to cancel the examinations where the breach of any Rule relating to such examination or

circumstance indicate that examinations held have failed to achieve the object for which they were held or holding of examinations was not fair.

Apparently, this power also flows from the General Clauses Act, which envisages that authority which has power to do an act has also the power to not to do that act or undo the act.

However, whenever power is vested in any functionary of the State it is so vested with certain object to be achieved with exercise of that power. It is also too late in the day to say that power being conferred on the Authority by Statute, its exercise by such authority is beyond the scope of judicial review. To wit in the words of Justice Krishna Iyer (Mohinder Singh Gill vs. The Chief Election Commissioner, New Delhi, AIR 1978 SC. 851) :

> "Secondly, the pregnant problem of power and its responsible exercise is one of the perennial riddles of many a modern constitutional order."

Notwithstanding some doubts standings at the early stage of development of Administrative Law under our Constitution, it is no more in doubt that administrative action of the State is as much amenable to judicial review as quasi judicial orders or

legislative action. It is settled that ordinarily the exercise of power vested in administrative authority will not be interfered with by the Court where power has been exercised fairly and for the purpose for which the power has been so vested in the authority, but there is no absolute discretion, immuned from judicial review on any ground whatsoever in favour of administrative authority though the decisions relating to social and economic policy, treaties, mobilising armed forces and relating to defence matters are ordinarily not subject to judicial review as a rule.

There is nothing to support any form of un-canalised and unfettered discretion of any instrumentality of State and where power has been abused in the sense that it has not been exercised fairly and justly or has been exercised arbitrarily and unreasonably and not for the purpose for which it was vested in the authority is liable to be interfered with through judicial review.

> As early as in 1647 in Estwick vs. City of London, (1647 Style 42) as noticed in B.G.Ramchandran's Law of Writ (6th Edition Revised by Justice C.K.Thakker), the King's Bench observed that;
>
> "Wheresoever a commissioner or other

> person hath power given to do a thing at his discretion, it is to be understood of sound discretion, and according to law and that this Court hath power to redress things otherwise done by them".

This principle has been evolved on experience of life through ages that Wider the ambit of power, the greater is the possibility of its abuse. The following statement was attributed to Burke in House of Common in 1772 while considering the motion of Select Committee in the inquiry into the affairs of the East India Company:

> "When discretionary power is lodged in the hands of any man or class of men, experience has shown that it could be abused. Where no laws exist, men might be arbitrary and very necessary acts of government will often be, in such cases, represented by the interested and malevolent as instances of wanton oppression."

This statement was noticed by Supreme Court in P.N.Duda vs. P.Shiv Shanker, 1988 (3) SCC 167 by referring to Nirad Chaudhury's book "Clive of India". It has been accepted through judicial pronouncement to keep check on abuse of wide powers vested in the administration through judicial decisions which has developed into balancing act between freedom of

exercising discretionary powers by the administration and its limits within which such powers can be exercised and also the limits of judicial review on administrative action of the State.

Supreme Court in Khudiram vs. State of West Bengal, (1975) 2 SCC 81, made it clear that there is nothing like unfettered discretion immune from judicial reviewability. The truth is that in a Government under law, there can be no such thing as unreviewable discretion.

It was noticed in State of Maharastra vs. Kamal Durgule, (1985) 1 SCC 234 that:-

> "It is true that abuse of power is not to be assumed lightly but experience has belied the expectation that discretionary powers are always exercised fairly and objectively."

Justice Bhagwati in Sheonandan Paswan vs. State of Bihar, (1987) 1 SCC 288, stated that :

> "The law has always frowned on uncanalised and unfettered discretion conferred on any instrumentality of the State and it is the glory of administrative law that such discretion has been through judicial decisions

structured and regulated."

Professor de Smith in his work "Judicial Review of Administrative Action" (1995 Edition) has opined that:-

> "In almost all democratic country it is accepted that discretion conferred on administration is not unfettered, uncontrolled or non-reviewable by courts. To keep the administration within its bounds, courts have evolved principles and imposed conditions and formulated tests and taking recourse to those principles, they effectively control the abuse or arbitrary exercise of discretionary power by the administration."

It was further stated :

> "nowadays the courts will not readily be deterred by subjectively worded statutory formulae from determining whether acts done avowedly in pursuance of statutory powers bore an adequate relationship to the purpose prescribed by statute.
>
> If a discretionary power is conferred without reference to purpose, it must still be exercised in good faith and in accordance with such implied purposes as the courts attribute to the intention of the Legislature."

Benjamin Cardozo commenting on this aspect

in his work “The nature of Judicial Process”, observed about limits of power to judicial review where a judge has discretion to exercise, as under:

> “The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to `the primodical necessity of order in the social life'. Wide enough in all conscience is the field of discretion that remains.”

The House of Lords in Council of Civil Service Unions (CCSU) vs. Minister for the Civil Service, (1984) 3 A.E.R. 935, without being exhaustive, stated the grounds on which administrative action is subject to control by judicial review. In the words of Lord Diplock:-

> “Judicial Review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial

review. The first ground I would call `illegality', the second `irrationality' and the third `procedural impropriety'."

He added:-

"That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of `proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community; but to dispose of the instant case of three already well-established heads that I have mentioned will suffice."

This view was endorsed by Lord Roskill in Brind vs. Secretary of State, (1991) 2 WLR 588.

Broadly speaking, without attempting to be exhaustive the principle as evolved by the courts in India for judicial review of administrative action can be stated as summed in V.G.Ramchandran's Law of Writs in India (6th Edition 2006) whether the decision making authority:-

(i) exceeded its jurisdiction?
(ii) committed an error of law,
(iii) committed a breach of the rules of natural justice,

(iv) reached a decision which no reasonable tribunal would have reached or,

(v) abused its powers,

(vi) failed to exercise jurisdiction; or

(vii) abuse of jurisdiction.

Failure to exercise jurisdiction can be manifested in various ways. Where power has been sub-delegated when no such power of delegation exists, it is a case of failure of discretion. Likewise, imposing fetters on one's own discretion results in failure to exercise discretion. Acting under dictate of someone else which amounts to abdicating the power also amounts to failure to exercise discretion. Significantly, for the present purpose, non-application of mind has also been considered to be one of the aspects where there is failure to exercise discretion legally resulting in abuse of discretion.

Prof. De Smith in its “Judicial Review of Administrative Action” has explained the doctrine about imposing fetters on discretion thus:-

> “An authority entrusted with discretionary power must exercise such power after considering individual cases. Instead, if the authority imposes fetters on its discretion by adopting fixed rules of policy to be applied in all cases coming before it,

there is failure to exercise discretion by the authority. What is expected fo the authority is that it must consider the facts of each case, apply its mind and take a decision. If any general rule is propounded which will be applied to all cases, there is no consideration of the facts of an individual case at all and exercise of discretion by the authority. By failing to keep the `mind ajar' and by `shutting ears', the authority virtually forecloses participating in the decision-making process."

Professor went on to add that:-

"The underlying rationale of the rule against fettering discretion is to ensure that two perfectly legitimate administrative values, those of legal certainty and consistency, may be concentrated by another equally legitimate administrative value, namely, that of responsiveness. While allowing rules and policies to promote the former values, it insists that the full rigour of certainty and consistency be tempered by the willingness to make exceptions, to respond flexibly to unusual situations, and to apply justice in individual cases."

The aforesaid principle was approved by the Supreme Court in Gurbaksh Singh vs. State of Punjab, (1980) 2 SCC 565, wherein it said:-

> "Generalisations on matters which rest on discretion and the attempt to discover formulae of universal application when facts are bound to differ from case to case frustrate the very purpose of conferring discretion. No two cases are alike on facts and, therefore, courts have to be allowed a little free play in the joints if the conferment of discretionary powers is to be meaningful."

These observations were made while reversing the decision of Punjab and Haryana High Court laying down set of principles within which format the discretion by the Sessions Court, while considering application under Section 438 Cr.P.C., were to be exercised.

In this connection, reference may also be made to Jit Singh vs. State of Punjab, (1979) 3 SCC 37, wherein, the Court said :-

> "Where the Government is satisfied that the operation of any of the rules causes undue hardship in any particular case, it may by order, dispense with or relax the requirement of that rule to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner, provided that the case

> is not dealt with in a manner less favourable to the person concerned than provided by the relevant rule."

We may now examine the present case on the touch stone of above principles.

Firstly, it is to be seen under the scheme of Rules that para 219 (c) (i) has been couched not in an imperative mandate but as a guideline for setting the question paper with the primary object to test the professional ability. Expression used in para 219 (c) (i) is that in written test objective type questions `should be set' which is only expression of desired format and not `must be set', which could mean an imperative mandate. Therefore, literally, it cannot be read as an imperative direction that question paper is to be set for adjudging the professional ability in a strait jacket formula but can only be considered as general guideline expressing desirability of setting up objective type question paper. Therefore, mere failure to set up objective type question by itself cannot be taken to be violation going to the root of validity of written test so as to make it null and void necessarily. The decision making authority, in such circumstances, before cancelling the examination was necessarily called upon to consider whether the deviation from the guideline for setting up papers has

affected the quality of test in adjudging the professional ability of the candidates. It is nobody's case either in the grievance raised by the individuals or Union or by the decision making authority that the question paper which was set for the written test in question was in any way not aimed at adjudging the professional ability of the candidates or was lacking, in any sense, to fulfil the object of adjudging the professional ability of the candidates in respect of work which they are required to discharge on being selected or promoted. This shows total non application of mind by the competent authority in not referring to the object of setting question paper for adjudging the professional ability. This non application of mind falls not only within the domain of failure to exercise jurisdiction but also falls in the domain of exercise of authority arbitrary or abuse of authority by not exercising it for the purpose it has been vested in it. There being no complaint of this sort from any quarter nor this has been the factor which has gone into consideration, the exercise of power by the competent authority in cancelling the examination for the violation of Para 291 (c), in our opinion, suffers from vice of unfair and irrational decision taken in a mechanical way without application of mind to the purpose for which the power is vested in the competent authority that whether the exercise of such power would further the object of holding written test or non-cancellation would carry the

object. We are, therefore, not addressing ourselves to the question whether to what extent there is violation or deviation from the percentage of setting objective type questions requiring answers in “Yes” or “No” or in one or two lines as the explanatory note about what the objective type questions mean. There may be two opinion that certain questions which have been set up in the question papers, answers to which are required to be given in one or two words fall within the ambit of objective type questions or not, but action of the respondents in cancelling the examinations held on various dates in April and May, 2005 suffers from the vice of non application of mind and relevant circumstances which ought to have been considered before cancelling the examination and cancelling the results.

In these cases, it is very pertinent to notice that question papers were set by the Members of Selection Board having knowledge of Rules. The defects pointed out by the complainants and Union could very well have been raised on the very dates the written tests were held, but keeping mum until the the results were declared and taking a chance to take the result as it comes and on being unsuccessful have raised the grievance, which could have been raised on the dates the tests were taken, therefore, the grievances were not real but with oblique motive to get rid of the results, which otherwise did not affect the object of

the written test or the object of said circular, could not have been the ground for setting aside the examination as a whole and take away the benefits of results from those who have successfully cleared the test for being included in the panel of select list for the purpose of consideration of their cases for promotion against the available vacancies.

Moreover we have already noticed above that while laying down para 215 (d) of IREM that procedure other than laid down in 219 can ben adopted by deciding individual cases of hardship, therefore, it is inherent in the dealing with the case where violation of procedure laid down in para 219 is concerned for taking any consequential remedial steps to consider damage which is caused because of such breach. In the present case, breach of para 219 (c) is alleged so far as examinations relating to Station Superintendents and Passenger Guards are concerned. That is to say that as required by clause (c) of para 219 adequate percentage of marks were not distributed by setting objective type questions. The instance taken by the respondents while cancelling the examinations while taking into consideration this breach of rule also is that the authority did not have any option but to cancel the examinations whenever such breach is pointed out. In coming to this conclusion, apparently, the competent authority has overlooked the flexibility envisaged in adopting the

procedure other than laid down in para 219.

Apparently, the decision making authority has decided to cancel the examination on this aspect of the matter by imposing a fetter on its power as if it was bound to take only decision of cancellation of examination in case of failure of any rule or statutory instruction, for which We do not find any warrant in the rules. As we have noticed, if the decision is irrational, such administrative decision is liable to judicial review and set at naught.

Another aspect which is relevant for the present purposes is non-application of mind while taking decision. We are not referring to sub-delegation or acting under the dictate of someone else where power is bound to be exercised as if it is coupled with the duty, as this is not the case which has been set up or can be set up in the circumstances in the scheme of things.

It is the basic foundation of Rule of law that whenever any power is vested in any authority, it must be exercised with application of mind to the circumstances of the case in furtherance of the object of vesting such power and not in a mechanical manner. If the power has been exercised without application of mind to the relevant consideration and acts mechanically, it amounts to failure of exercise

discretion and the action become bad.

The Supreme Court in Shri Sitaram Sugar Company Ltd. vs. Union of India and others, (1990) 3 SCC 223, stated as under:

> "A repository of power acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness ..... The true position, therefore, is that any act of the repository of power, whether legislative or administrative or quasi-judicial, is open to challenge if it is in conflict with the Constitution or the governing Act or the general principles of the law of the land or it is so arbitrary or unreasonable that no fair minded authority could ever have made it."

Professor De Smith in his work "Judicial Review of Administrative Action" has stated the principle;

> "Courts are nowadays slow to construe discretion as absolute, with the result that a failure on the part of the public authority to act consistently with

> the underlying purposes for which the discretion was conferred may not only amount to a breach of a public law duty.....If the source of authority relied upon is statutory, the courts begin by determining whether the power has been exercised in conformity with the express words of the statute and may then go on to determine whether it has been exercised in a manner that complies with certain implied legal requirements. In some contexts they have confined themselves to the questions whether the competent authority has kept within the four corners of the Act and whether it has acted in good faith. Usually they will pursue their inquiry further and will consider whether the repository of a discretion, although acting in good faith, has abused its power by exercising it for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness."

Coming to other part of controversy, we have referred to the relevant part of the circular dated 3/11/1988. It is apparent from the circular that this was meant for giving a fair opportunity to those who wanted to answer their written test in Hindi and not in any other language namely English or any regional language, as the case may be. The subject of Circular is "Option of Hindi medium in Departmental Examinations." It says that it has been decided that

the special care should be taken in all the departmental examinations.

The first requirement is that option of Hindi medium should be allowed in all the qualifying and competitive departmental tests. It is nobody's case that this option was not offered to any of the candidates. In fact in response to court's query, it was clearly stated by the parties that all the candidates appeared in Hindi medium and they were not denied the option of using Hindi medium in taking written test.

The second requirement with reference to which controversy has been raised is that the question paper should invariably be prepared in bilingual form. Apparently, this was also primarily to enable the candidates, who have opted Hindi medium, to answer the questions in Hindi. This option in sub-para 3 of the circular clearly emphasises that each question paper should contain the clear mention about the option of Hindi Medium. Apparently, bilingual form of question paper is integrally related to option to the candidates to use Hindi medium in taking written test and where the question paper is prepared in Hindi language and all the candidates have opted to participate in Hindi Medium, the absence of bilingual form of question papers looses its significance. Apparently, it cannot be said that setting up of

question paper in Hindi, where all candidates appearing in the test have opted to appear in Hindi could result in violation of instructions contained in the circular dated 3/11/1988. We have noticed that sub-para 12 of the circular dated 3/11/1988, which clearly indicates that where option of Hindi Medium is not allowed or question papers are not made in bilingual form, such examination will be treated against the rules but cancellation of examination has not been stated to be necessary consequence, but discretion was left with the competent authority. Expression `could be cancelled' is indicative of this. Thus, it was clearly a discretion vested in the competent authority to cancel or not to cancel the examination for such violation. The instance taken by the respondent Union of India that sub-para 12 mandated in all circumstances to cancel the examination where the question paper has not been set up in bilingual form, in our opinion, is purely misreading of power conferred on the competent authority.

Admittedly, without considering any circumstance of the case namely that all the candidates have appeared in Hindi Medium and question paper was set in Hindi Medium without causing any prejudice to any of the candidates, cancellation of examination for that irregularity was not just fair and reasonable. It is well known that all statutory

provisions are not mandatory in the sense that non-compliance would render the action void ab-initio. There are provisions which are to be considered mandatory, non-fulfillment of the same may render the action void-ab-initio and there are certain statutory provisions which are required to be followed but its violation does not touch the foundation of action to be invalid but on relevant consideration may render void. If the intention was to cancel the examination merely on the ground that question paper has not been prepared in bilingual form then Para 12 would have been couched differently and would have certainly contained the declaration in itself that violation of any of the requirements of the circular would render the examination void and would be treated cancelled. That being not the position, the matter rests with the discretion of the competent authority, depending upon the consideration of relevant circumstance whether violation affected the basic object of fair examination for testing the professional ability of the person concerned, and whether such violation resulted in defeating the object of circular dated 3/11/1988 in any manner.

It was a benefit extended to Railway employees for taking examination in Hindi Medium also. There being no grievance that anyone, because of violation of rule relating to setting of question paper in bilingual form by setting papers in Hindi

only, has prejudicially affected. Obviously, since all candidates had opted and appeared with Hindi Medium, this objection could not have been raised. In such circumstance no person vested with such power would have reasonably proceeded to cancel the examination affecting the rights and legitimate expectancy of those persons, who have cleared the examination.

It would be a different situation when candidates with Hindi medium as well as English or other permissible medium were appearing in the examination and persons with other medium would have been prejudiced because of absence of examination paper in bilingual form containing questions set in such other medium. Apparently, there is no application of mind by the competent authority in cancelling the examination on their own saying to any such consideration. Such an action was not justifiable on the principles already discussed above.

Lastly, for cancelling the examination reference was made to non-setting of questions relating to Official Language Policy and Rules. Suffice it to say that answering the questions about Official Language Policy was optional and not compulsory. If that were so, non-setting of the questions on Official Language could not have affected the validity of examination at all. It is also pertinent to notice that non-setting up questions on

Official Language was not even included in para 12 of the Circular dated 3/11/1988 which could be treated to be against the Rules and for which competent authority could exercise power to cancel the examination. When out of number of instructions contained in Circular dated 3/11/1988 only two were referred to for the non compliance of which the examination could be cancelled, by necessary implication for breach of other instructions the extreme step of cancellation could not form part of authority to cancel examination for that reason. Therefore, even on the basis of authority conferred, the examinations could not have been cancelled for non-inclusion of questions on Official Language and in our opinion did not result in violation of circular dated 3/11/1988.

The other contention of the learned counsel for the Union of India as well as learned counsel for the other respondents that breach of para 3 and para 6 being not disputed and power has been so vested to cancel such examination, it was mandate of the rules that in such circumstance the examination must be cancelled and also that the power has been exercised for such violation, cancellation of examination for violation of para 3 and 6 of circular dated 3/11/1988 itself is suffice to sustain the order of cancellation does not commend itself.

In this connection, principle was stated as early as in 1891 by House of Lords in John Derby Allcroft and others vs. The Lord Bishop of London and others, 1891 AC 666, affirming the decision of court below reported in (1890) 24 PC Queen's Bench Division 213, and succinctly stated in V.G.Ramchandran's Law of Writ 6th Edition, as under:-

> "Where the ground of challenge is that relevant considerations had been ignored, the court will normally try to assess actual or potential importance of the factors so overlooked or ignored, even though it would entail, to some extent, speculation. If a trivial or unimportant factor is overlooked, the court may not conclude that the discretion had been illegally or improperly exercised. But if they are important, vital or substantial considerations or the relevant statute requires them to be considered, non-consideration thereof may vitiate the action."

The basic question which was required to be considered was whether any harm was likely to cause by cancelling the examination compared to the harm which is likely to be there if the examinations were not cancelled and for considering this, relevant consideration which was required to be taken into account by the competent authority was whether any candidate or class of candidates have been affected

prejudicially on account of alleged non-compliances. It was not considered nor even now it is case that the question papers were in any respect wanting in testing the knowledge of examinees necessary for discharging their function for the post, which alone is stated to be the object of holding such written test. Nor it is case that the question paper in dispute was at cross purpose with object of circular dated 3/11/1988 in extending option to prospective candidates to take their examination in Hindi Medium.

We have already noticed above the circumstance in which the power has been exercised. The examinations were cancelled on the ground that the paper was set only in one language namely Hindi and it was not in bilingual form and it did not contain any question on Official Language, further it did not contain requisite percentage of objective type questions.

All these defects were apparent on the face of question paper, which was set by the member of Selection Board yet no objection was raised at that time but instead the full circle was allowed to complete by declaring the results. It was only after the declaration of results, at the instance of complaint made by the disgruntle candidates, who have failed in the examination, the examinations have been cancelled for such violation which did not in any

manner were at cross purpose with the object for which written tests are to be held in a mechanical manner by assuming a strait jacket result that only course open to competent authority was to cancel the examinations exalting it to a position of automatic cancellation as if such question paper renders examination void-ab-initio. It goes to show that this is a case of non-exercise of jurisdiction and non-application of mind. Consequently it is also a case of abuse of power affecting those persons, who had taken the examinations seriously & successfully giving rise to legitimate expectation about inclusion of their names in the select list by those who had secured minimum qualifying marks and also of those who had secured above 80% marks for being included in the panel of outstanding candidates. The grievance which has been ventilated through representation clearly indicates that the grievance was not with the examinations but it was because some of the senior candidates have failed and that could hardly be a reason for cancelling the examinations.

A great emphasis was laid by learned counsel Shri M.R.Singhvi appearing for the failed candidates that unfair means were used in the examinations. Suffice it to say that bald assertions made after the results were declared by the disgruntle candidates and at their instance by the Union without any specific particulars that some candidates were using Mobile

phones or books goes to show that it was clearly an oblique attempt to infructuate the entire examination which took place in a fair manner. However, except such vague assertions, no complaint was made by anyone until results were declared so as to warrant inquiry into the allegations. In fact the respondent authorities have not inquired into such allegations, nor any credence to such complaint has been given in reply submitted by the Railway Authorities. In our opinion, rightly so.

As a result of aforesaid discussion, we are of the opinion that the competent authority failed to observe the minimum safeguard required for exercise of power because of self imposed straitjacket rule for exercise of such power and in cancelling the examinations for minor or technical breach of rules irrespective of the consideration whether object of holding such examinations have failed or examinations have been conducted in fair and just manner without giving undue advantage or dis-advantage to anyone. Consequently, the power exercised was not for the purpose for which it was vested.

In view of the above, writ petitions filed by the Union of India (D.B. CIVIL WRIT PETITION NO.2515/2006 & 2516/2006) and corresponding writ petitions filed on behalf of failed candidates D.B. CIVIL WRIT PETITION NO. 669/2006 & 1264/2006) who had

appeared at the examinations for selection to the post of Passenger Guards and Station Masters, respectively fail and are hereby dismissed and the order of Tribunal in Original Application Nos. 253/2005 and 259/2005 setting aside the order of cancelling examinations is affirmed for the reasons stated above.

For the reasons stated above, the writ petition No.594/2006 filed by R.K.Ojha and others must succeed as the exercise of power by the competent authority in cancelling the examinations for Station Superintendents also suffers from same vice of non-application of mind to relevant consideration. The Tribunal was not justified in applying different yardstick in mechanical manner without considering the object for which objective type questions are to be set and the object of whole process of written test and whether the impugned question papers were defective in a manner which would defeat that object or the examination suffered from mass mal practices. No such case was set or made out.

Consequently, Writ petition No.594/2006 is allowed. The order of Tribunal rejecting O.A. no. 260/2005 is set aside. The order dated 23/8/2005 cancelling examination held for selections to the post of Station Superintendents is set aside and the results declared by the competent authority for all the examinations are restored.

As a consequence of above directions, the Selection Board may proceed further for completing the selection process in accordance with the procedure laid down for the same and in accordance with law. The selection process should be completed within a period of one month from the date of this order.

No order as to costs.

(GOPAL KRISHAN VYAS), J. (RAJESH BALIA), J.

Arun/Pankaj Baweja